

REMARKS

This application has been reviewed in light of the Final Office Action mailed April 22, 2005. Reconsideration of this application in view of the below remarks is respectfully requested. Claims 1, 3 – 7 and 9 – 15 are pending in the application with Claims 1, 7 and 13 – 15 being in independent form. By the present amendment, Claims 3 and 9 have been amended to correct claim dependencies. No new subject matter has been introduced into the disclosure by way of the present amendment.

I. Rejection of Claims 1, 3 – 7 and 9 – 15 Under 35 U.S.C. § 103(a)

Claims 1, 3 – 7 and 9 – 15 are rejected under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent No. 6,798,893 issued to Tanaka in view of “Digital Watermarking of MPEG-2 Coded Video in the Bitstream Domain” written by Hartung et al. Applicant respectfully traverses the rejection.

The Tanaka patent was issued after the U.S. filing of the present application and both Tanaka and the present application are commonly assigned to NEC Corporation. Therefore, Applicant submits that at the time the invention of the subject application was made, the Tanaka patent was commonly assigned and, thus, cannot be properly used as a prior art reference against Applicant’s present invention, pursuant to 35 U.S.C. § 103(c)(1).

Consequently, without the Tanaka teaching of determining a picture type, Hartung is insufficient in disclosing or suggesting Applicant’s claimed invention. Specifically, Hartung fails to disclose or suggest modifying a watermark (i.e., pattern data) to have an insertion intensity that is selected based on the determined picture type into which the watermark is to be inserted.

Therefore, for at least the reasons given above, Claims 1, 3-7 and 9-15 are believed to be patentably distinct and allowable over the cited prior art references. Accordingly, Applicant

respectfully requests withdrawal of the rejection with respect to Claims 1, 3 – 7 and 9 – 15 under 35 U.S.C. § 103(a) over Tanaka and Hartung et al.

CONCLUSIONS

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 1, 3 – 7 and 9 – 15 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicant's undersigned attorney at the number indicated below.

Respectfully submitted,



Paul J. Esatto, Jr.
Registration No. 30,749

SCULLY, SCOTT, MURPHY & PRESSER, P.C.
400 Garden City Plaza - Ste. 300
Garden City, New York 11530
(516) 742-4343

PJE:DAT:jam